

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

* * * * *

UNITED STATES OF AMERICA,)	Criminal Action
)	No. 21-391
vs.)	
)	
LEONARD GRUPPO,)	October 29, 2021
)	9:59 a.m.
Defendant.)	Washington, D.C.
)	
)	

* * * * *

**TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE BERYL A. HOWELL,
UNITED STATES DISTRICT COURT JUDGE**

APPEARANCES:

FOR THE GOVERNMENT: HAVA MIRELL
U.S. Attorney's Office
312 N. Spring St.
Los Angeles, CA 90012
(213) 894-0717
Email: hava.mirell@usdoj.gov

FOR THE DEFENDANT: DANIEL R. LINDSEY
920 Mitchell Street
Clovis, NM 88101
(575) 763-8900
Email: danlindsey@suddenlink.net

CAMILLE WAGNER
1629 K Street
Washington, DC 20006
(202) 630-8812
Email: law@myattorneywagner.com

ALSO PRESENT, ROBERT WALTERS, U.S. Probation

Court Reporter: Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter

Proceedings reported by machine shorthand, transcript
produced by computer-aided transcription.

P R O C E E D I N G S

THE COURTROOM DEPUTY: Matter before the Court,
Criminal Case No. 21-391, United States of America versus
Leonard Gruppo.

Counsel, probation officer, and pretrial agent,
please come forward and state your names for the record.

MS. MIRELL: Good morning, Your Honor.
Hava Mirell on behalf of the United States.

THE COURT: Yes. Good morning, Ms. Mirell.

MR. LINDSEY: Good morning.
Daniel Lindsey for Mr. Gruppo, pro hac vice, and Camille
Wagner.

MS. WAGNER: Good morning, Your Honor.
Camille Wagner.

THE COURT: Okay. Good morning to all of you.
And good morning, Mr. Gruppo.

PROBATION OFFICER: Good morning, Your Honor.
Robert Walters with probation.

THE COURT: All right.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning.

Okay. You may all be seated.

All right. So this sentencing hearing for Leonard
Gruppo is being held in person this morning; but the public
access line is being made available for persons to listen to

1 these proceedings remotely, rather than being present in the
2 courthouse. I like to alert everybody in the courtroom that
3 there is a public access line that's open to the world, just
4 for your own information.

5 Anyone listening to the sentencing hearing over
6 the public teleconference line is reminded that, under my
7 Standing Order 20-20, recording and rebroadcasting of court
8 proceedings, including those held by videoconference, is
9 strictly prohibited. Violation of these prohibitions may
10 result in sanctions, including removal of court-issued media
11 credentials, restricted or denial of entry to future
12 hearings, or any other sanctions deemed necessary by the
13 presiding judge.

14 All right. So I am going to begin this sentencing
15 hearing the way I do all of my sentencing hearings, by
16 reviewing all of the documents that I have looked at and
17 materials that I have looked at, to make sure we're all
18 working off the same set of records and materials.

19 So, of course, I have received the presentence
20 investigation report, docketed at ECF 25; and the sentencing
21 recommendation, docketed at ECF 26, from the probation
22 department.

23 I have also received the following documents
24 submitted by counsel in advance of this hearing: The
25 sentencing memorandum from the government, docketed at

1 ECF 25; as well as the sentencing memorandum submitted on
2 behalf of the defendant, Mr. Gruppo, docketed at ECF 28; an
3 exhibit describing Mr. Gruppo's military service; and a
4 letter from the defendant, docketed at ECFs 28-1, and 2.

5 Does the government have all of these records?

6 MS. MIRELL: Yes, Your Honor.

7 THE COURT: And does the defense?

8 MR. LINDSEY: Yes, Judge.

9 THE COURT: All right. And am I missing anything?

10 MS. MIRELL: No, Your Honor.

11 MR. LINDSEY: No. No, Your Honor.

12 THE COURT: Okay. Excellent.

13 All right. Mr. Gruppo, just stand where you are,
14 please.

15 I just -- I like to tell defendants, in each of my
16 sentencing hearings, how the sentencing hearing will
17 proceed. Some people have appeared in court a number of
18 times because they have prior records, and they realize that
19 judges do sentencings differently from courtroom to
20 courtroom. Other defendants, like you, have never appeared
21 at a sentencing hearing before, so you don't know what's
22 really going to happen other than what your counsel has told
23 you.

24 So my sentencing hearings, and your hearing this
25 morning, will have three different steps to it. At the

1 first step, I will determine whether the government and you,
2 with your counsel, have any objections to any of the factual
3 or other portions of the presentence investigation report
4 that's been filed in your case. If there are objections, I
5 will resolve those.

6 The second step is where I hear from the lawyers
7 and then from you. So if you want to know: When is it
8 during this hearing that I have an opportunity to speak
9 directly to the judge, it's at the second step of the
10 hearing. I will hear first from the government, then I will
11 hear from your counsel; and then I will give you the
12 opportunity to speak to me directly, so that's when that
13 will happen.

14 The last step requires the Court to explain the
15 reasons for the sentence imposed upon consideration of all
16 of the factors I am required to look at, under 18 U.S.C.
17 Section 3553(a), and then I will impose sentence.

18 By contrast to most sentencing hearings in front
19 of Article III judges, in this and every other court in the
20 country, I do not have to determine how the sentencing
21 guidelines apply in your case because it's a petty offense,
22 Class B misdemeanor, and so the sentencing guidelines don't
23 bother; and they don't apply to your case. So whereas most
24 sentencing hearings have four steps where I have to go
25 through the guideline determination, that is not the case in

1 yours.

2 All right. Do you have any questions about what
3 is going to be happening during the hearing this morning?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Okay. Thank you. You may be seated.

6 THE DEFENDANT: Thank you.

7 THE COURT: All right. Step one. The final
8 presentence investigation report and sentencing
9 recommendation were filed in this matter on October 15th.

10 And I understand, from page 19 of the presentence
11 investigation report, that the government has no objection
12 to any of the factual or other determinations set out in the
13 PSR; is that correct?

14 MS. MIRELL: That's correct, Your Honor.

15 THE COURT: All right. So then, Mr. Lindsey, have
16 you and your client read and discussed the presentence
17 investigation report?

18 MR. LINDSEY: Yes, Judge. We have.

19 THE COURT: And do you have any objections to any
20 of the factual statements or other determinations set out in
21 the PSR?

22 MR. LINDSEY: I do not.

23 THE COURT: Thank you. You may be seated.

24 Mr. Gruppo, could you just stand right where you
25 are.

1 Are you fully satisfied with your attorney in this
2 case?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And do you feel that you have had
5 enough time to talk to Mr. Lindsey about the probation
6 department's presentence investigation report, the
7 sentencing recommendation in this case, and all of the other
8 papers submitted in connection with your case?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Thank you. You may be seated.

11 Hearing no objection from either side, the Court
12 will accept the factual portions of the presentence
13 investigation report as undisputed and as my findings of
14 fact at sentencing.

15 We're now at step three. I will hear from the
16 government first about application of the factors under
17 3553(a).

18 MS. MIRELL: Yes. Good morning, Your Honor.

19 I want to begin by saying that I listened to the
20 Court's sentencing yesterday, and I understand this Court's
21 position.

22 So to aid the Court in understanding the
23 government's position in this case, I want to focus on the
24 factors that led us to recommend a 30-day term of
25 imprisonment for Mr. Gruppo.

1 In so doing, I also intend to address some of the
2 concerns that the Court expressed yesterday over the
3 government's charging and plea bargaining decisions in these
4 Capitol riot cases.

5 There are three factors --

6 THE COURT: That's all I am looking for, an
7 explanation.

8 MS. MIRELL: There are three factors that
9 distinguish Mr. Gruppo from other rioters facing misdemeanor
10 charges in these cases. First is Mr. Gruppo's outright
11 disregard of law enforcement's instructions during the riot
12 on January 6th as evidenced most prominently by his failure
13 to exit the Senate wing door, after being instructed no less
14 than three times by U.S. Capitol police officers.

15 His disregard for law enforcement is rendered more
16 egregious by the second distinguishing factor, which is his
17 prior military service.

18 As this Court recognized during yesterday's
19 hearing, it is, quote, inconceivable that someone of
20 Mr. Gruppo's background who swore an oath to support and
21 defend the Constitution could participate in a riot that
22 would cause such damage to our global reputation as a
23 democracy. The last factor is that Mr. Gruppo destroyed
24 evidence of his participation in the riot.

25 Of the misdemeanor defendants who engaged in

1 evidence destruction, five have received recommendations for
2 custodial sentences; and one received a recommendation of
3 home confinement, but was nevertheless sentenced to 45 days'
4 incarceration. None have received a probation-only
5 sentence.

6 THE COURT: All right. So let me just -- let me
7 just back up because I want to go into detail about the
8 reasons that the government has made its recommendation for
9 a period of incarceration --

10 MS. MIRELL: Yes, Your Honor.

11 THE COURT: -- for Mr. Gruppo; and I appreciate
12 how the government is using his prior military service.

13 And I do -- I do think that it's somewhat
14 ironic -- I don't know how else to put it -- I think
15 Mr. Lindsey put in his papers that it's something --
16 commenting about how his military service is being used
17 against him when, in fact, someone who served in the
18 military for 28 years -- served in four combat zones -- as a
19 physician's assistant saving lives in, really, under the
20 most dire circumstances, that I am not sure most of the
21 people sitting at the government's table would ever be able
22 to survive, quite frankly; and that having done that
23 service -- that instead of expressions of respect for that
24 service, the government is holding it against him. I am a
25 little bit puzzled that that is, like, the government's

1 second factor for why you are thinking he deserves jail
2 time.

3 MS. MIRELL: Well, Your Honor, I do not -- and the
4 government does not intend to express --

5 THE COURT: And it's not just because I grew up on
6 military bases around the world and count, among close
7 friends, my own parent's service in the army who -- my
8 father also parachuted, and so on. I mean, I just don't --
9 it surprises me that the government is holding that service
10 that, I think, most Americans would have enormous respect
11 for, against this man.

12 MS. MIRELL: I want to state in no uncertain terms
13 that I do have tremendous respect -- and the government has
14 tremendous respect for all of those who save and who risk
15 their lives for our country, and especially Mr. Gruppo who
16 goes out into combat zones and provides much needed medical
17 services to injured soldiers; that's commendable. And he
18 should deserve recognition for that.

19 THE COURT: Beyond -- beyond "commendable"; it's
20 pretty heroic, and that's why he has so many honors.

21 MS. MIRELL: Agreed, Your Honor.

22 The purpose of bringing this up as a factor --

23 THE COURT: Let -- can I -- let me just go back to
24 how I am looking at the facts --

25 MS. MIRELL: Sure.

1 THE COURT: -- and just -- because, as I looked at
2 the government's recommendation for 30 days' incarceration
3 in this case, these are some of the factors I look at,
4 because -- at the same time that the government is citing
5 some factors for a 30-day period of incarceration, the
6 government, as I understand it -- and this is what I want to
7 check; that the government is acknowledging that Mr. Gruppo
8 was in the Capitol Building for about seven minutes or less,
9 is that right?

10 MS. MIRELL: Yes, Your Honor.

11 THE COURT: And he didn't physically attack any
12 police officer or other person, correct?

13 MS. MIRELL: That is correct.

14 THE COURT: And he didn't personally damage any
15 property inside the Capitol, correct?

16 MS. MIRELL: That is correct.

17 THE COURT: And he didn't engage in any chanting
18 or any other verbal statement or even carrying signs to
19 incite others to follow him into the Capitol; is that
20 correct?

21 MS. MIRELL: With respect to the signs, we didn't
22 see any evidence of signs. But we don't have audio footage,
23 so I can't make a representation as to whether he was
24 shouting.

25 THE COURT: Okay. But the video that you have

1 seen -- you haven't seen any evidence of that? I haven't.

2 MS. MIRELL: That's correct. Of the evidence we
3 have, correct.

4 THE COURT: He voluntarily turned himself in to
5 the FBI?

6 MS. MIRELL: Yes, eventually.

7 THE COURT: Okay. And he fully cooperated at the
8 outset, when he turned himself in to the FBI, by turning
9 over to law enforcement all of his devices, his passwords to
10 devices, and all of his social media accounts; is that
11 right?

12 MS. MIRELL: That's correct.

13 THE COURT: And he had no inflammatory language on
14 social media before, during, or after January 6th, let alone
15 any calls for political violence?

16 MS. MIRELL: We were not able to identify any
17 social media associated with Mr. Gruppo, and we did not
18 identify any evidence of such.

19 THE COURT: Okay. And he promptly agreed to enter
20 a plea agreement after an offer was extended by the
21 government and accept responsibility?

22 MS. MIRELL: That's correct, Your Honor.

23 THE COURT: And you don't have any evidence of any
24 preplanning by him or carrying any weapon into the Capitol
25 Building, or even wearing any defensive gear as if he were

1 anticipating to be engaged in any kind of violent
2 confrontation that day; is that correct?

3 MS. MIRELL: That's correct.

4 THE COURT: Okay. So I look at all of those basic
5 facts.

6 And absent what the government views as -- absent
7 his military service, if he weren't somebody who served in
8 the military, in four combat zones for 28 years saving
9 lives, would that make a difference to the government?

10 Would that make a difference to the government in
11 terms of its recommendation of 30 days' incarceration here?

12 MS. MIRELL: I think it would, Your Honor.

13 THE COURT: And the government would then -- if he
14 had not done that service, the government would not be
15 recommending 30 days' incarceration here?

16 MS. MIRELL: If he wasn't trained to recognize the
17 danger that was evident on January 6th; if he wasn't trained
18 to assist, rather than to harm; if he wasn't -- he hadn't
19 been trained for 28 years to actually care for law
20 enforcement and recognize exactly the circumstances that his
21 and many others conduct caused, that would affect the
22 government's decision. But the fact that he did receive
23 that training, and the fact that he overlooked -- and
24 intentionally overlooked his oath, to commit one of the most
25 destructive acts against our Constitution and our democracy,

1 that does affect the government's view of his conduct.

2 THE COURT: All right. Well, I will just be
3 honest; I don't view his military service that way. I just
4 can't bring myself to do that.

5 I think people's -- we look at people's criminal
6 history as an indication of whether or not they need
7 specific deterrence, which is an important factor in
8 sentencing, and this is a man who has no prior criminal
9 history; to the contrary, he has a heroic professional
10 career behind him. So I don't view his prior military
11 service the way -- the same way the government does in this
12 case; so that's number one.

13 So let's look at the other reasons.

14 I think you -- the other circumstances -- putting
15 off the table, just a disagreement between the Court and the
16 government and how heroic military service is viewed in
17 connection with sentencing, the other reasons -- as I
18 understand it, from the government's papers and oral
19 presentation here -- is that there were three other
20 circumstances that prompted the government to make a
21 recommendation of 30 days' incarceration: Not leaving the
22 door he entered the Capitol by, after being told to do so by
23 a police officer; two, a purported delay in turning himself
24 into law enforcement after his friend, Kenneth Kelly, had
25 been arrested; and three, what the government calls his

1 obstructive conduct -- and you used the word "obstruction,"
2 and, let me tell you, judges pay attention to that --
3 obstructive conduct of deleting January 6th related photos
4 and videos from his phone; and I think there was also
5 something about growing his hair after January 6th.

6 So absent those three reasons: Not leaving by the
7 door he entered the Capitol, after being told to do so by
8 the police officer; a purported delay in turning himself
9 into to law enforcement after Kenneth Kelly, his friend, who
10 he was with that day had been arrested; and three, alleged
11 obstructive conduct -- absent those three circumstances,
12 would the government be recommending probation in this case
13 with no prison term or, because of the military service, you
14 still would?

15 MS. MIRELL: Well, Your Honor, I think there's two
16 additional factors that I would note.

17 THE COURT: Okay.

18 MS. MIRELL: First is scaling the walls of the
19 Capitol.

20 THE COURT: Scaling the walls.

21 MS. MIRELL: Scaling the walls.

22 The defendant acknowledges in his memorandum that
23 he did have to actually climb up a bannister that was his
24 height in order to get onto the Capitol, and what that
25 evinces about his intent and what he knew about how wrongful

1 his conduct was; that's a factor that weighed on the
2 government.

3 I think what the defendant witnessed at the upper
4 West Terrace, with police officers establishing a perimeter
5 and very visibly trying to push rioters away from the area,
6 and his decision at that moment to then enter the Capitol as
7 he saw officers trying to push people away; that weighed on
8 the government's decision as well.

9 I believe the government would not offer any
10 probation-only recommendation for this defendant based on
11 the factors -- even taking away the military service --
12 based on the factors we see today, we would consider,
13 obviously, home confinement with probation, as we have in
14 several other cases; but probation only, I don't think we
15 would be extending that.

16 I know Your Honor expressed some concerns
17 yesterday about the probation-only recommendation in the
18 government's early cases in, namely, the Morgan-Lloyd case,
19 the Bissey case, and the Ehrke case.

20 First, we think those cases are distinguishable
21 based on the factors I have already outlined, some of which
22 the Court might agree with, some of which the Court may not;
23 but they did not involve deliberate decisions to ignore law
24 enforcement authorities; they did not involve destruction of
25 evidence; and background and characteristics were different,

1 although we respect the Court's different opinion there.

2 But we also want to help the Court understand what
3 an anomaly those cases were, and what those recommendations
4 were; and I want to provide a few statistics.

5 The government has extended 268 pleas in these
6 Capitol riot cases. Of those 268 pleas, 5 included
7 probation-only recommendations; that is less than 2 percent
8 of cases. And so suffice it to say that the probation-only
9 recommendation is the exception and not the norm and should
10 not, as this Court and many other courts in this district
11 have recognized, become the default in most of these cases.

12 Had Anna Morgan-Lloyd come to the government and
13 asked for a plea from the government today, taking into
14 account her post-plea conduct, we would not offer her a
15 probation-only recommendation.

16 As the Court is aware, the government's
17 investigation is constantly evolving. And we continue to
18 analyze factors based on our current understanding of what
19 happened on January 6th; and we have come to appreciate that
20 a probation-only recommendation likely will not be
21 appropriate in most of these cases.

22 THE COURT: All right. Well, let's go into the
23 factors that you have noted here. Not leaving by the door
24 he entered the Capitol after being told to do so by a police
25 officer, I mean, I guess -- and the CCTV footage shows that

1 he did speak to police officers. That's -- I don't think
2 the government disputes that corroborates his explanation
3 that he was actually -- once he got inside the building, was
4 asking police officers how to get out?

5 MS. MIRELL: Correct.

6 THE COURT: Right. So, I mean, his explanation,
7 for what it's worth, is that he didn't want to go out the
8 same door because it was crowded with the mob trying to get
9 in, so he walked the path of least resistance to get out; it
10 took him about seven minutes to do that, and he was in and
11 out.

12 So is that -- I mean, is it because he followed
13 the police officer's direction to leave the building but he
14 didn't take the same door that he came in?

15 To me, it's like the police officers told him to
16 get out; he was looking for a way out. He left. He didn't
17 take the nearest door. His excuse is there were tons of
18 people coming in. Based on what I have seen on videotapes,
19 there was a huge mass of people, thousands of people trying
20 to get in. Perhaps -- does the government think he could
21 have gotten out easily that way?

22 MS. MIRELL: Well, I think -- yes. I think, Your
23 Honor, the evidence actually tends to belie Mr. Gruppo's
24 explanation for why he didn't --

25 THE COURT: It tends to belie?

1 MS. MIRELL: My apologies.

2 It actually tends to undermine or casts doubt on
3 Mr. Gruppo's explanation because the full video footage --
4 first of all, Mr. Gruppo entered about 45 minutes after the
5 breach of that Senate wing door, which is when we saw the
6 large masses of people come in. There was tons of traffic.
7 And perhaps, at that time, it would have been very difficult
8 for a rioter to leave the door (sic).

9 But by the time that Mr. Gruppo had entered, it
10 had become more of a trickle through the door. And we know
11 that because other rioters left through that door at around
12 the same time that Mr. Gruppo entered; so it wasn't
13 impossible to leave.

14 I anticipate that Mr. Gruppo is going to say he
15 felt unsafe because a perimeter was being established and he
16 saw clashes between law enforcement officers and rioters,
17 and he just wanted to avoid that perimeter.

18 Law enforcement officers were pushing the rioters
19 north. There is another way to exit the Capitol grounds
20 aside from entering the building -- and that would have been
21 to walk in the direction that law enforcement officers were
22 encouraging rioters to walk.

23 I understand that Mr. Gruppo did not understand or
24 comprehend law enforcement's thinking and why it was trying
25 to establish a perimeter and where, but that shouldn't have

1 prevented him from obeying their orders.

2 So I would also note, with respect to the amount
3 of time and his entry and whether he was able to leave or
4 not -- you know, they're comparing him -- putting him on the
5 spectrum of other rioters; there were people who walked in
6 and out, and that's it. Once they heard from law
7 enforcement go back out that door, they did; but Mr. Gruppo
8 didn't do that.

9 You know, I recognize he did walk directly
10 through; didn't engage with officers along the way as far as
11 we know, but there was an opportunity for him to leave.

12 THE COURT: All right. Let's go to the next one,
13 which is a delay in surrender.

14 The defense counsel has said that any delay in
15 this matter was solely due to Mr. Gruppo's counsel's busy
16 schedule and not any fault of Mr. Gruppo.

17 I mean, Mr. Lindsey is a busy lawyer. We got all
18 of the details of his very busy schedule in his briefing
19 laying out exactly what he was doing every single day, in
20 trying to figure out who was the right person to call within
21 the U.S. Attorney's Office within days of Mr. Gruppo
22 figuring out that Kenneth Kelly had been arrested. He tried
23 to find counsel; he found a counsel. He had never been
24 involved in the criminal justice system before; it wasn't
25 like he had a criminal lawyer on retainer, he had to find

1 one. He found one; told the lawyer: I want to turn myself
2 in. And then it took his lawyer a little bit of time to
3 figure out who to call; find time to do that.

4 Does the government have any reason to dispute the
5 outline of this delay in turning himself in?

6 MS. MIRELL: Your Honor, we do not dispute that
7 outline.

8 THE COURT: And so I -- is that a reason, this
9 purported delay -- and let me just also confirm. At the
10 time that Kenneth Kelly was arrested and Mr. Gruppo then
11 started to find a lawyer to figure out how to turn himself
12 in, was there a criminal complaint outstanding at that time
13 for Mr. Gruppo?

14 MS. MIRELL: There was not a criminal complaint.

15 THE COURT: So it's not like he was a fugitive
16 from an arrest warrant?

17 MS. MIRELL: No. No, Your Honor.

18 You will notice, in my presentation this morning,
19 that I actually didn't touch upon the delay and
20 self-surrender.

21 THE COURT: Okay. Perfect. Then no more --
22 because you have now backed off of that particular reason
23 set forth in your papers for why there was a 30-day
24 incarceration period recommendation.

25 Okay. Now let's get to the obstruction reason.

1 MS. MIRELL: Sure.

2 THE COURT: And I guess, as I understand the
3 obstruction reason, the government claims the defendant -- a
4 very serious allegation -- the defendant obstructed the
5 government's investigation by deleting all potential
6 evidence from his phone within days of seeing the negative
7 portrayal of the January 6th attack in the media; that's
8 from the government's memorandum at page 17.

9 And, in fact, the defendant says that he deleted
10 the photographs after he got back to his home in New Mexico
11 because he saw what had happened in the days following
12 January 6th. So this is certainly before Kenneth Kelly had
13 been arrested, right?

14 MS. MIRELL: Yes, Your Honor.

15 THE COURT: And it was certainly before Mr. Gruppo
16 was aware that law enforcement might be looking for him; is
17 that right?

18 MS. MIRELL: I don't believe so.

19 Your Honor, I think that it's fair to say that
20 most Capitol rioters were on notice in the hours -- in the
21 days after January 6th that law enforcement was looking for
22 them and that they were being investigated, and that we were
23 prosecuting these cases.

24 THE COURT: So Mr. Gruppo says that he deleted the
25 photos -- photos from the phone, if I recall correctly,

1 because he was ashamed and embarrassed at what he had done,
2 and he -- which is a far cry from wanting to hide evidence
3 that could be used against him in a criminal prosecution;
4 that's what you need for obstruction.

5 So what is the government's evidence that the
6 deletion of the material from his phone was warranted,
7 calling it obstructive behavior, because he evidenced some
8 intent to hide evidence that could be used against him?

9 MS. MIRELL: Based on just the defendant's
10 awareness that, in the days after January 6th, law
11 enforcement was investigating this Capitol riot case.

12 Now, of course, the defendant is not charged with
13 obstruction, and the government did not have evidence
14 sufficient to prove obstruction prior to Mr. Gruppo's
15 proffer with the government; but he admitted to seeing the
16 coverage of January 6th, to knowing that there was interest
17 in prosecuting these cases, and then -- to then deleting
18 this.

19 Now, of course, he can delete for both reasons;
20 one, he does feel ashamed; but he might also feel ashamed
21 because law enforcement is investigating this, and coming
22 home and realizing that the majority of America actually
23 frowned upon and was horrified by the conduct is not -- is
24 not mutually exclusive from recognizing that I am at risk of
25 prosecution here.

1 And, you know, in addition, we did have tipsters,
2 uncorroborated -- but tipsters who have said: Word of mouth
3 is that he has changed his appearance; so that's also
4 another factor. But, again, that's not beyond a reasonable
5 doubt, and that's why we haven't charged obstruction here.

6 THE COURT: Well, the government did get his
7 phone; so the government could have done a forensic review
8 of that phone and could have pulled off anything it wanted,
9 right?

10 MS. MIRELL: Yes, Your Honor.

11 My understanding, based on the conversations with
12 the agent, was the technological capacities of the
13 investigating agency in Texas did not have the technology to
14 be able to establish whether items had been affirmatively
15 deleted, or where -- sometimes the government can receive
16 reports in which the reports indicate certain media have
17 been deleted and recover that --

18 THE COURT: A Cellebrite report.

19 MS. MIRELL: Exactly.

20 -- and, you know, we can see the recovered media;
21 we didn't have that here, so we couldn't establish it.

22 THE COURT: They did not have access to Cellebrite
23 software to generate a Cellebrite extraction?

24 MS. MIRELL: The technological --

25 THE COURT: I thought every law enforcement agency

1 in the country has that.

2 MS. MIRELL: Well, Your Honor, I think had --

3 THE COURT: The FBI in Texas doesn't?

4 MS. MIRELL: Had this case proceeded to trial, I
5 think they would have sent it off for further forensic
6 review, but by the time --

7 THE COURT: New Mexico. Sorry. Sorry.

8 MS. MIRELL: Well, it was investigated in Texas;
9 so you are correct, Your Honor.

10 We would have sent it off for further review, you
11 know, had we wanted to try to prove obstruction. But here
12 they saw nothing from January 6, and the defendant entered a
13 guilty plea.

14 THE COURT: Well, he deleted all this media so he
15 didn't post pictures on social media to drum up support for
16 some conspiracy theory about the 2020 presidential election
17 or to incite political violence anywhere else, right?

18 MS. MIRELL: Correct. We don't have evidence of
19 that.

20 THE COURT: All right. So your other reasons,
21 that he climbed -- scaled the walls of the Capitol. I had
22 understood that he got on a ledge and went up a ledge -- you
23 know, a ledge on the side of the Capitol steps that's a very
24 wide ledge. I wouldn't do that; but I guess he did that.

25 And you call that "scaling"? Is that what you are

1 calling "scaling"?

2 MS. MIRELL: Of course, Your Honor, there is a
3 spectrum, as there always is in these cases. Some people
4 were scaling 20-, 30-foot walls, but the defendant --

5 THE COURT: And climbing scaffolding.

6 MS. MIRELL: Correct.

7 Again, there is a spectrum. But he had to exert
8 some energy to get up a wall that was his height; that's not
9 easy to do for a physically fit -- for anyone --

10 THE COURT: So that's why he was probably the only
11 person being able to do that, and it was a clear path to the
12 Capitol; wouldn't you say?

13 MS. MIRELL: He wasn't the only person doing that.
14 But that -- when you're at the juncture where you're
15 deciding: Hey, am I going to pull myself up on a bannister,
16 on the Capitol, to get into a -- it was packed like
17 sardines, this staircase, as Your Honor has seen in the
18 footage. And to join that fray and to position myself up on
19 the upper West Terrace and confront -- and seeing this
20 confrontation between law enforcement officers -- that was a
21 red flag; and he deliberately overlooked that red flag.

22 THE COURT: Right. Well, I am just looking
23 through a number of the other cases, some of which you have
24 mentioned. You know, I am just looking because there are so
25 many of these. Judges are not going to be able to do this,

1 like -- you know, compare this guy, this guy, this guy.

2 You know, but -- you know, some of the things that
3 we have -- some of these other defendants for whom the
4 government recommended a probationary period, some with
5 detention, some without; but, generally, no incarcerative
6 period, certainly not an incarcerative period of 30 days --
7 you know, where people who, like, went through broken
8 windows, stayed inside for, like, 24 minutes, holding signs:
9 The storm is here. After January 6th -- writing proudly
10 about it. CCTV footage showing chanting and yelling near an
11 officer -- that's Daniel Doyle, and the government
12 recommended probation with some home confinement.

13 I just think that there are other people who saw
14 what was going on, actually were chanting and encouraging
15 what was going on, for whom the government recommended
16 probationary periods; some not just probation only, but some
17 with home detention. And from what I have seen of
18 Mr. Gruppo's offense conduct, he didn't do any of that
19 cheering on.

20 I mean, all of them saw the behavior. And I don't
21 think the government is recommending 30 days' incarceration
22 for everybody who was there who saw what was going on.

23 MS. MIRELL: No, Your Honor, we are not. But I --

24 THE COURT: So -- all right. Is there anything
25 else you want to add?

1 MS. MIRELL: Nothing further, unless the Court has
2 any further questions.

3 THE COURT: No. Mr. Lindsey.

4 MR. LINDSEY: May it please the Court.

5 Chief Judge Howell, I live in a small military
6 community in eastern New Mexico.

7 THE COURT: I'm sorry. I can't hear you,
8 Mr. Lindsey.

9 MR. LINDSEY: I live in a small military town in
10 eastern new Mexico; and I got there because my dad served in
11 the military. And he had a lot in common with Mr. Gruppo;
12 he got his jump wings at Fort Benning, Georgia, like my
13 brother did in the 82nd Airborne, and we ended up in this
14 military town.

15 And when Mr. Gruppo came to talk to me about this,
16 he wanted to turn himself in immediately. He was
17 humiliated, devastated. He was UM1 in those photographs;
18 and he wanted me to make arrangements to turn him in
19 immediately. We did everything we could. I bear
20 responsibility for any delay there.

21 I did not know at the time the extent of
22 Mr. Gruppo's military career; and we tried to keep it quiet.
23 And he wanted to keep it quiet because he felt like he
24 dishonored that military service for 27 years; and we tried
25 to do that.

1 THE COURT: And he did. You know, let's not mince
2 words.

3 MR. LINDSEY: And I asked him -- he gave me his
4 story. Everything he told me was the truth. This man is
5 honorable. It has been an honor for me to represent him;
6 for him to cooperate with law enforcement and the Select
7 Committee investigating this of Congress, to give up those
8 crucial Fifth Amendment rights and give statements and
9 cooperate as much as he can.

10 The bottom line here is that Mr. Gruppo made a
11 mistake. And anyone who has been in this business for over
12 30 years as I have, sees that good people make mistakes.
13 Mr. Gruppo made a serious mistake; he knows it; he has taken
14 full responsibility for it. He has cooperated in any way,
15 shape, or form that he can. He turned over his devices.

16 We're well aware that the Court is an expert in
17 forensics, digital forensics; and we gave them the
18 passwords. Our little sheriff's office has a Cellebrite
19 program that they can pull off everything on someone's
20 phone, pictures, everything -- except Snapchats; but they
21 get those from California through a subpoena. So the
22 government has had his devices. They had a 5-terabyte hard
23 drive; his iMac Pro, his phone -- everything.

24 This man did not destroy any evidence in this
25 case. He has been honest; he has been truthful; and he is

1 very remorseful. He has -- there will be an asterisk, as he
2 told me, on his military career. Everything that he did,
3 all the good things that he did -- there is going to be an
4 asterisk there because he followed the recommendations of a
5 President who was amoral and cannot tell the truth -- a
6 former President; and he's paying the price for it. And he
7 is here in this courtroom to accept any punishment that you
8 have for him.

9 I understand the Griffith case yesterday; I spoke
10 to counsel regarding that, and regarding that -- the split
11 type of sentence that she had in that case; she gave us some
12 good advice. But in this case -- Judge, we think a
13 probationary period is appropriate in this case, whatever
14 the amount is that you choose.

15 I am pretty saddened that the government would try
16 to use his government service against him; but I understand
17 what they're saying because they take an oath to defend this
18 country from all enemies, foreign and domestic. And this
19 was a riot.

20 He doesn't -- when he got back to his hotel and
21 started seeing the news reports, he was devastated and
22 sickened. So he will accept any punishment that you have,
23 Judge; and if it's probation, we appreciate probation. He
24 will comply with every single thing that you ask him to do.
25 He is an honorable man, and it has been a pleasure for me to

1 work with him. Thank you.

2 THE COURT: Thank you, Mr. Lindsey.

3 Mr. Gruppo, this is now your opportunity to speak
4 to me.

5 THE DEFENDANT: Thank you, Your Honor.

6 THE COURT: Mr. Gruppo, let me just begin.

7 Take a breath -- because you do medical work; you
8 don't necessarily stand up in a public courtroom and speak;
9 and I know it can be hard on some people to do that. But I
10 have to say you write well. I thought your letter to the
11 Court was very eloquently put, and moving.

12 And, in fact, if you wanted to read portions of
13 your letter to the Court -- if that would be easier for you,
14 because I can tell this is a very emotional time for you, I
15 invite you to do that.

16 THE DEFENDANT: Thank you, Your Honor. I think I
17 can summarize the gist of the letter that I was trying to
18 convey to you.

19 I am ashamed. I am very sorrowful -- I have been.

20 As soon as I got back to my hotel, I couldn't
21 believe the reports I saw. I shouldn't have been there. I
22 shouldn't even have went to the Capitol; it was a huge
23 mistake.

24 I have let down so many people because of this.

25 Everybody -- the Capitol Police, my congressional leaders,

1 the President -- both Presidents, my family, my friends, my
2 employers. It's been -- I don't know what to say except I'm
3 sorry.

4 I shouldn't have done it. I take full
5 responsibility. Whatever you decide, I accept without
6 complaint, Your Honor. That's all I have.

7 THE COURT: All right. Well, I will explain the
8 sentence I am about to impose, and then impose sentence.

9 Mr. Lindsey, you can stand with your client.

10 So after considering the sentencing memoranda that
11 have been submitted by both the government and by
12 Mr. Gruppo's counsel, reviewing the probation office's
13 presentence investigation report and the sentencing
14 recommendation, hearing argument here today, I must now
15 consider the relevant factors, under 18 U.S.C. Section
16 3553(a), and ensure that I impose a sentence that is
17 sufficient, but not greater than necessary to comply with
18 the purposes of sentencing.

19 And let me just review what those purposes of
20 sentencing are. They're set out in the statute; and those
21 purposes include: The need for the sentence imposed to
22 reflect the seriousness of the offense; to promote respect
23 for the law; provide just punishment for the offense; deter
24 criminal conduct generally and, also, specific deterrence to
25 protect the public from further crimes or in future crimes

1 by this defendant, Mr. Gruppo, and promote rehabilitation.

2 So, in connection with fashioning a sentence that
3 addresses all of those purposes, I must, under 18 U.S.C.
4 Section 3553(a), consider the nature and circumstances of
5 the offense; the history and characteristics of the
6 defendant, Mr. Gruppo; the types of sentences that are
7 available; the need to avoid unwarranted sentencing
8 disparities among defendants with similar records found
9 guilty of similar conduct; and the need to provide
10 restitution to any victims of the offense.

11 And I am going to begin with the restitution
12 amount owed by Mr. Gruppo given that the statute of
13 conviction is not covered by the two general restitution
14 statutes codified at 18 U.S.C. Sections 3663 and 3663(a);
15 the Court has no authority to determine any restitution
16 amount, and is limited by what the government has agreed to
17 in the plea agreement. And the plea agreement provides for
18 a restitution judgment of \$500 which is the amount the Court
19 will order, pursuant to 18 U.S.C. Section 3663(a)(3).

20 So regarding the nature and circumstances of the
21 offense, Mr. Gruppo has been convicted of parading,
22 demonstrating, or picketing in a Capitol Building, in
23 violation of 40 U.S.C. Section 5104(e)(2)(G), which is a
24 petty offense, Class B misdemeanor.

25 I am not going to go into detail describing the

1 nature and circumstances of the offense conduct on
2 January 6th, 2021, other than to say what I have said
3 before; that the rioters attacking the U.S. Capitol on
4 January 6th, as part of a large mob, were not mere
5 trespassers engaging in protected First Amendment protests;
6 they were certainly not tourists. And I say that again and
7 again because there still seems, in some areas, to be a
8 debate about that issue.

9 As countless videos show, the mob that attacked
10 the Capitol was violent, and everyone participating in that
11 mob contributed to that violence by their sheer numbers and
12 their intentional focus on getting inside the Capitol
13 Building; some using force, chemical sprays, many types of
14 objects to push past police lines, through smashed doors and
15 windows, with alarms blaring, tear gas flowing from both
16 sides -- the police towards the rioters, the rioters towards
17 the police.

18 The mob that the defendant was part of in the
19 attack on the Capitol, on January 6th, forced Congress and
20 the Vice President to evacuate, staffers to hide behind
21 locked doors and desks, delayed certification of our
22 presidential election while the world was watching; caused
23 significant damage domestically to our faith that: No
24 matter what our political parties or views are, as
25 Americans, we believe in the peaceful transition of power

1 after an election.

2 Mr. Gruppo, you did help facilitate that riot just
3 by being there, adding to the numbers that overwhelmed law
4 enforcement and disrupting the proceedings of Congress.

5 And the government is absolutely right when it
6 says that you had many off ramps that you chose to ignore
7 before entering the U.S. Capitol Building. You saw puffs of
8 smoke rising from the northern staircase; deafening sounds
9 of rioters clashing with law enforcement; rioters scaling
10 the outer walls of the Capitol Building; the presence of
11 officers trying to clear a perimeter on the upper West
12 Terrace; shattered glass at the entrance to the Senate wing
13 door. But you did plow on to get into that building by
14 climbing on this stairwell ledge -- climbing up.

15 You stayed inside around seven minutes, spending
16 some of that time talking to police officers asking about
17 the best exit. You didn't follow the police direction to
18 exit through a door where the mob had been coming in.

19 The government contends that, at that point, it
20 was just a trickle, you should have been able to find your
21 way out. I am going to give you, in some ways, the benefit
22 of the doubt on that. I saw pictures of that mob; it looked
23 like a zoo, densely packed. A person trying to find a quick
24 and easy safe way out would likely have found another way
25 out than that door; I understand that.

1 You admit you should have known better, but
2 somehow that day you didn't. And you say that you headed to
3 the Capitol Building not with any intent to obstruct and
4 impede congressional proceedings; but because the
5 then-President, Trump, told protesters at the "stop the
6 steal" rally -- and I quote: After this, we're going to
7 walk down; and I will be there with you. We're going to
8 walk down. We're going to walk down. I know that everyone
9 here will soon be marching over to the Capitol Building to
10 peacefully and patriotically make your voices heard.

11 And you say that you wanted to show your support
12 for and join then-President Trump as he said he would be
13 marching to the Capitol; but, of course, didn't.

14 So, with that factual set of offense conduct
15 circumstances, I look at some of the following pertinent
16 factors in assessing your role in that overall mob activity
17 that had devastating consequences.

18 First, you were in the Capitol Building for about
19 seven minutes or less; two, you did not physically attack
20 any police officer or any other person; three, you did not
21 personally damage any property inside the Capitol; three
22 (sic) -- you did not engage in chanting or slogans, carry
23 posters, signs, or brandish a weapon of any kind to incite
24 others to follow you into the Capitol; you voluntarily
25 turned yourself into the FBI; six, you fully cooperated at

1 the outset, by turning over to law enforcement your devices,
2 your passwords to devices and social media accounts; seven,
3 you had no inflammatory language on social media before,
4 during, or after January 6th, let alone any calls for
5 political violence; eight, you promptly agreed to enter a
6 plea agreement after an offer was extended by the government
7 to accept responsibility in this case; nine, you had no
8 preplanning for this event; it wasn't something that you
9 came to Washington, D.C. -- to break into the Capitol and
10 join the mob, delay the certification of the presidential
11 vote. You didn't bring any dangerous weapons with you; you
12 didn't even bring any defensive gear to -- as if you were
13 planning for some kind of violent confrontation.

14 You did acknowledge that you knew you shouldn't
15 have entered the Capitol Building. But the evidence, as I
16 see it, points to a conclusion that this was a defendant who
17 didn't deliberately intend or support the violence and
18 destruction that has left such a dark stain on our
19 democracy.

20 In sum, although the nature of the offense and the
21 need for the sentence to reflect the seriousness of the
22 offense and promote respect for the law would generally
23 favor a custodial sentence, the particular circumstances of
24 this defendant's conduct put him in a less troublesome
25 category than many of the more aggressive rioters that day.

1 Regarding your history and characteristics, you
2 have no criminal history; and you have had a professional
3 life that, to my mind, should and does merit respect.

4 You are an army veteran who has served in combat
5 zones in four wars; as a medical professional, you helped
6 save lives.

7 You acknowledge that you are a well-educated
8 veteran with a distinguished career in the military; and you
9 should have known better. Your lawyer says that you know
10 that you are going to have an asterisk next to your military
11 service and all of your many, many awards; and you will.

12 Perhaps the government, in seeking an
13 incarcerative period here wants to use you as an example to
14 other people in the military with the specialized training
15 you get to focus outside this country but not on Americans
16 that that specialized training, when turned on Americans and
17 at the heart of our democracy, has got to be punished with
18 jail time; and I get that.

19 But for the individual standing here before me
20 today who has recognized that his conduct contributed -- and
21 I quote from his defense memo: Contributed to an
22 insurrection and the peaceful transfer of power, two
23 democratic tenets that you repeatedly risked your life for
24 over 28 years to defend -- I think you recognize that this
25 was a grave mistake and are doing your work now,

1 particularly by talking to members of Congress on the Select
2 Committee to help deter other people with the specialized
3 training you received in the military not to turn it against
4 their fellow Americans.

5 I have to say that it does strike me that your
6 better judgment seemed to have returned to you almost
7 immediately after January 6th because, in the days that
8 followed, you did voluntarily surrender to law enforcement.
9 You initiated discussions almost immediately after your
10 friend was arrested with no prompting from friends or
11 family, it appears, to figure out how to surrender on your
12 own.

13 You have shown sincere remorse in your letters to
14 the Court. You have cooperated extensively with law
15 enforcement by turning over your phone, your computer, your
16 hard drive with all relevant passwords. And although the
17 government calls it obstruction that you did delete photos
18 from your phone that you took on January 6th, I credit that
19 you did so in response to feelings of being ashamed by what
20 had happened and that you were there to participate in the
21 actions of the mob.

22 Far from shying away from what Mr. Gruppo himself
23 has called a life-altering mistake, you have been very
24 blunt, up front, about your own embarrassment and
25 humiliation and your shame about your criminal conduct which

1 you have detailed, it seems, quite honestly.

2 Unlike other January 6th defendants, you didn't
3 boast about your presence at the Capitol Building on social
4 media or in the news. You haven't advocated as others who
5 the government has recommended probationary sentences for;
6 you haven't recommended that there be some overturning of
7 the legitimate electoral process.

8 You have expressed -- and I appreciate this -- you
9 have expressed -- one of the few defendants that I have seen
10 in these cases -- an apology to your countrymen, to
11 President Biden, President Trump, Vice President Pence,
12 Vice President Harris, Speaker Pelosi, and our other
13 congressional leaders for your actions on January 6th -- and
14 they do deserve an apology.

15 One of the things that struck me in your letter is
16 that you say that one thing you have done as a result of
17 this experience is to renew your commitment to the basic
18 teachings from your Catholic school education, including the
19 biblical command that you shall love your neighbor as
20 yourself. And it did strike me that, in these politically
21 divisive times, that maybe we should all take time to
22 remember we are all Americans and we should avoid demonizing
23 people with different political views.

24 As to the need for the sentence imposed to deter
25 criminal behavior and protect the public from further crimes

1 of the defendant, these are very critical considerations for
2 a sentencing judge. The seriousness of the criminal conduct
3 we witnessed on January 6th only highlights the need for
4 deterrence in the form of a sufficient sentence to deter the
5 defendant and others from engaging in this kind of conduct
6 in the future.

7 I do not find, however, the need for specific
8 deterrence for this defendant in light of his lack of any
9 criminal history, his lack of any violent conduct, or any,
10 even, property damage caused by him during the offense
11 conduct; the lack of any promotion of his criminal activity;
12 the lack of any planning to engage in any violent activity
13 on January 6th; as well as his early acceptance of
14 responsibility, his extensive cooperation, and the
15 financial, professional, and social consequences that have
16 already befallen him due to his actions on January 6th.

17 Regarding the types of sentences available, the
18 defendant is now convicted of a petty offense, Class B
19 misdemeanor, so he faces a maximum term of imprisonment of
20 six months, and up to five years' probation.

21 Regarding the need to avoid unwarranted sentencing
22 disparity, the defendant has raised the fact that other
23 January 6th defendants charged with petty offense
24 misdemeanors have received probationary sentences, and
25 suggests that a custodial sentence here would be an

1 unwarranted sentencing disparity; I do agree.

2 I do recognize that a range of sentences, both
3 probationary and custodial, have been imposed on January 6th
4 defendants convicted of this petty offense misdemeanor; but
5 given the specific offense conduct of Mr. Gruppo, the Court
6 finds that a sentence of probation with home detention would
7 be appropriate here.

8 Based on my consideration of these and other
9 factors, I will now state the sentence to be imposed.

10 Pursuant to the Sentencing Reform Act of 1984, and
11 in consideration of the provisions of 18 U.S.C. Section
12 3553, it is the judgment of the Court that you, Leonard
13 Gruppo, are hereby sentenced to a term of 24 months, two
14 years of probation, as to Count 4 of the indictment.

15 In addition, you are ordered to pay a special
16 assessment of \$10, in accordance with 18 U.S.C.
17 Section 3013.

18 The Court authorizes that supervision and
19 jurisdiction of this case be transferred to the United
20 States District Court for the Northern District of Texas.
21 While on supervision, you shall abide by the following
22 mandatory conditions, as well as the standard conditions of
23 supervision which are imposed to establish the basic
24 expectations for your conduct while on supervision.

25 The mandatory conditions include: One, you must

1 not commit another federal, state, or local crime; two, you
2 must not unlawfully possess a controlled substance; three,
3 the mandatory drug testing condition is suspended based on
4 the Court's determination that you pose a low risk of future
5 substance abuse. Four, you must make restitution in
6 accordance with 18 U.S.C. Section 3663, or any other statute
7 authorizing a sentence of restitution.

8 You shall comply with the following special
9 conditions: You are ordered to make restitution to the
10 Architect of the Capitol in the amount of \$500. The Court
11 determines you do not have the ability to pay interest and,
12 therefore, waives any interest or penalties that may accrue
13 on the balance. You must pay the balance of any restitution
14 owed at a rate of no less than \$100 each month.

15 You are ordered, also, to pay a fine in the amount
16 of \$3,000. The Court determines you do not have the ability
17 to pay interest and, therefore, waives any interest or
18 penalties that may accrue on the balance.

19 You must pay the financial penalty in accordance
20 with the schedule of payments sheet of the judgment. You
21 must also notify the Court of any changes in economic
22 circumstances that might affect the ability to pay this
23 financial penalty.

24 Having assessed the defendant's ability to pay,
25 payment of the total criminal monitoring penalties is due as

1 follows: Payment in equal monthly installments of \$125 over
2 a period of 24 months to commence after the date of this
3 judgment. You must provide the probation officer access to
4 any requested financial information and authorize the
5 release of any financial information until the restitution
6 obligation is paid in full. The probation office may share
7 financial information with the U.S. Attorney's Office.

8 You must not incur any credit charges or open
9 additional lines of credit without the approval of the
10 probation officer.

11 Restitution payments shall be made to the Clerk of
12 the Court for the U.S. District Court, District of Columbia,
13 for disbursement to the following victim, in the amount of
14 \$500, Architect of the Capitol, Office of the Chief
15 Financial Officer, attention Kathy Sherill, CPA, Ford House
16 Office Building, Room H2-205B, Washington, D.C. 20515.

17 The financial obligations are immediately payable
18 to the Clerk of the Court for the U.S. District Court, 333
19 Constitution Avenue, NW, Washington, D.C. 20001. Within 30
20 days of any change of address, you shall notify the Clerk of
21 the Court of the change until such time as the financial
22 obligation is paid in full.

23 The probation office shall release the presentence
24 investigation report to all appropriate agencies, which
25 includes the U.S. Probation Office in the approved district

1 of residence in order to execute the sentence of the Court.

2 Treatment agencies shall return the presentence
3 report to the probation office upon the defendant's
4 completion or termination from treatment.

5 Pursuant to 18 U.S.C. Section 3742, you have a
6 right to appeal the sentence imposed by the Court if the
7 period of imprisonment is longer than the statutory maximum
8 or the sentence departs upward from the applicable
9 sentencing guideline range -- which there is no range here.
10 If you choose to appeal, you must file any appeal within 14
11 days after the Court enters judgment.

12 As defined in 28 U.S.C. Section 2255, you also
13 have the right to challenge the convictions entered or
14 sentence imposed if new and currently unavailable
15 information becomes available to you or on a claim you
16 received ineffective assistance of counsel in entering a
17 plea of guilty to the offense of conviction or in connection
18 with sentencing. If you are unable to afford the cost of an
19 appeal, you may request permission from the Court to file an
20 appeal without cost to you.

21 Are there any objections to the sentence imposed
22 not already noted on the record from the government?

23 MS. MIRELL: No.

24 Your Honor, I just wanted to -- you did not -- I
25 believe I heard you say probation with home detention, but I

1 haven't heard any home detention condition. But if the --

2 THE COURT: You are right in that. There is.

3 Thank you.

4 Location monitoring. You will be monitored by a
5 form of location monitoring technology indicated here for a
6 period of 90 days, and you must follow the rules and
7 regulations of the location monitoring program. The cost of
8 the program is waived.

9 Location monitoring technology is at the
10 discretion of the probation officer, including radio
11 frequency monitoring, GPS monitoring, including hybrid GPS,
12 Smartlink, or voice recognition.

13 This form of location monitoring technology will
14 be used to monitor the following restrictions on your
15 movement in the community. You are restricted to your
16 residence at all times, except for employment, education,
17 religious services, medical, substance abuse, or mental
18 health treatment, attorney visits, court appearances,
19 court-ordered obligations, or other activities as
20 preapproved by the officer. Home detention.

21 Thank you.

22 MR. LINDSEY: How long was that, Judge?

23 THE COURT: 90 days. All right.

24 And they will -- I am going to transfer
25 jurisdiction to --

1 MR. LINDSEY: Actually, he resides in Dallas; he's
2 working at a clinic there.

3 THE COURT: Yes. The probation office has already
4 arranged for transfer of jurisdiction to Dallas, Texas; and
5 so they will take care of the location monitoring technology
6 for the 90 days of home detention.

7 All right. You may be seated.

8 Does the government have any motion to dismiss
9 open counts in the indictment or the information?

10 MS. MIRELL: Yes, Your Honor.

11 At this time, the government moves to dismiss
12 Counts 1 through 3 of the information.

13 THE COURT: That motion is granted.

14 Anything else to consider today from the
15 government?

16 MS. MIRELL: Nothing further, Your Honor.

17 THE COURT: And from the defense?

18 MR. LINDSEY: No, Judge. Thank you.

19 THE COURT: All right. You are all excused.

20 PROBATION OFFICER: Your Honor, just like with
21 yesterday, it's okay to put him on the bracelet -- I just
22 want your permission to give him a few days to get settled.

23 THE COURT: Yes. I will do that.

24 And I am going to sign the transfer of
25 jurisdiction right now.

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. LINDSEY: Just to be clear, he is going to
4 work while he is on the --

5 THE COURT: Correct.

6 MR. LINDSEY: Okay. Thank you.

7 (Whereupon, the proceeding concludes, 11:07 a.m.)

8 * * * * *

9 **CERTIFICATE**

10

11 I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby
12 certify that the foregoing constitutes a true and accurate
13 transcript of my stenographic notes, and is a full, true,
14 and complete transcript of the proceedings to the best of my
15 ability.

16

17 This certificate shall be considered null and void
18 if the transcript is disassembled and/or photocopied in any
19 manner by any party without authorization of the signatory
20 below.

21

22

Dated this 2nd day of November, 2021.

23

24 /s/ Elizabeth Saint-Loth, RPR, FCRR
Official Court Reporter

25